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Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

ALASKA RENT-A-CAR, INC.)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 3:03-cv-00029-TMB
CENDANT CORPORATION, et al.)	
)	
Defendants.)	
)	
)	

**OPPOSITION TO MOTION (AT DOCKET 313) TO SUBSTITUTE SECTION
II.B.5 OF DOCKET 199**

Defendants hereby submit this Opposition to Plaintiff's Motion to Substitute Section II.B.5 of Docket 199 ("Plaintiff's Motion to Substitute," Docket 313). By its motion, Plaintiff seeks to insert "different arguments" (Docket 313, p. 2) into Plaintiff's Opposition (Docket 199) more than seven months after the deadline for dispositive motions and to convert Plaintiff's Opposition into an overlength brief, contrary to this Court's Order at Docket 263. Simply put, Plaintiff's submission of information in Docket 199 that was prohibited by Federal Rule of

Evidence 408 and in violation of the Alaska Rules of Professional Conduct and Local Civil Rule 16.2(f) should not be rewarded with a “do-over.”

ARGUMENT

Plaintiff’s Motion to Substitute seeks to “substitute an insert (attached as Exhibit 1) containing *different arguments* that do not include any references to the mediation/settlement discussion, or the number discussed by the parties.” Plaintiff’s Motion to Substitute, p. 2 (emphasis added). The deadline for filing dispositive motions in this matter was June 20, 2006. By its motion, Plaintiff attempts to take advantage of its violations of Federal Rule of Evidence 408, the Alaska Rules of Professional Conduct, and Local Civil Rule 16.2 by submitting “different arguments” more than seven months after the deadline for dispositive motions. Neither party would be authorized at this time to submit new arguments relating to the various pending motions that are set for oral argument on March 7, 2007. It would be particularly inequitable for Plaintiff to be authorized to make “different arguments” as a result of its improper conduct.

Additionally, Plaintiff seeks to replace an argument section that was less than one page in length with “different arguments” of three full pages. Plaintiff’s Opposition, as filed, was already a 50-page brief. If Plaintiff is authorized to substitute three pages of argument for less than a page of prior argument, it will have succeeded in covertly filing a brief in excess of the 50-page limit, contrary to this Court’s Order. *See* Docket 263 (“The Court notes that future requests to file overlength briefs will not be granted absent extenuating circumstances.”). Plaintiff should not be permitted to expand the arguments already made in its 320 pages of memoranda accompanying its summary judgment motions and nearly 300 pages of opposition and reply memoranda as a reward for discussing confidential mediation information contrary to

Federal Rule of Evidence 408 and in violation of the Alaska Rules of Professional Conduct and Local Civil Rule 16.2(f).¹

CONCLUSION

For these and other reasons, the Court should deny Plaintiff's Motion to Substitute Section II.B.5 of Docket 199, which would substitute "different arguments" long after the close of briefing on the summary judgment motions and result in an overlength brief.

DATED at Anchorage, Alaska this 12th day of February, 2007.

Respectfully submitted,

/s/ Diane F. Vallentine
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Certificate of Service

I hereby certify a true and correct copy of the foregoing was served by hand delivery upon:

Jon Givens
601 W. 5th Ave., Suite 900
Anchorage, AK 99501

this 12th day of February, 2007

/s/ Diane F. Vallentine
Diane F. Vallentine

¹ In the event Plaintiff's Motion to Substitute is granted, Defendants reserve their right to reply to the new "substituted" Section II.B.5 of Docket 199. *See* Plaintiff's Motion to Substitute, p. 5 ("Alaska Rent-A-Car has no objection to Defendants submitting a response to the arguments contained in Exhibit 1 . . .").